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VIA EMAIL (payson@nywd.uscourts.gov)

January 19, 2023

Honorable Marian W. Payson
United States Magistrate Judge
United States District Court,
Western District of New York
100 State Street
Rochester, New York 14614

Re: Michael T. Miller, M.D. vs Great Lakes Medical Imaging, LLC a/k/a Western New York Radiology, LLC; Civil Action No.: 19-cv-6919-EAW-MWP

Dear Judge Payson:

Our office represents Michel T. Miller, M.D. the Plaintiff in this matter. Steve Sharkey, Esq. of the Bond, Schoeneck & King office represents the Defendant, Great Lakes Medical Imaging, LLC.

We had mediated this matter before Steven Modica, Esq. when we last met with the Court on May 10, 2022. Since our mediation with Mr. Modica and our meeting with the Court, companion litigation in New York State Court between Great Lakes Medical Imaging LLC and its insurance carrier has been proceeding in the Commercial Part of the 8th Judicial District. Late in November of 2022 a decision was issued in that matter by Justice Walker that clarified the issues of insurance that would be applicable to the Miller litigation in this Court. Mr. Sharkey and I have been monitoring that litigation and had put the discovery in this case in abeyance with the idea that the decision in the Commercial Part could very well effect the potential settlement of this case and prompt us to return to Mr. Modica for mediation. We are also trying to preserve the expense for the parties involved in the litigation pending a determination of whether there is insurance coverage. Now that the insurance issue has been resolved, Mr. Sharkey and I have discussed this matter and are requesting an amendment of the current scheduling order. The proposal we have for the Court is to allow for sixty (60) days for us to return to mediation before Mr. Modica and thereafter, amend the current Amended Scheduling Order to provide as follows:

1. All factual discovery in this case, including depositions, shall be concluded, if necessary, by September 1, 2023. All motions to compel would be filed no later than September 2, 2023.

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2. Plaintiff will identify any expert witnesses pursuant to Fed. R. Civ. P. 26(a)(2)(A) and provide reports pursuant to Rule 26(a)(2)(B) and/or disclosures pursuant to Rules 26(a)(2)(C) by October 1, 2023. Plaintiffs will make its experts available for depositions by November 1, 2023. Defendant will identify any expert witnesses and provide reports pursuant to Fed. R. Civ. P. 26 by December 1, 2023. Defendant shall make its experts available for a deposition by January 3, 2024. Parties shall complete all discovery relating to experts by January 3, 2024.

3. Dispositive motions, if any, shall be filed no later than January 30, 2024. Unless a consent to proceed before this Court has been filed, all motions shall be made returnable before Chief Judge Wolford.

Mr. Sharkey and I have jointly agreed to this proposal and will be communicating with Mr. Modica promptly to arrange a time to mediate with him. In the meantime, we respectfully request an amendment of the current Scheduling Order in the event our mediation efforts are not successful. We are available to answer any questions that the Court may have. We thank the Court for its consideration.

Respectfully yours,

WOODS OVIATT GILMAN LLP



William G. Bauer

Please direct responses to Rochester Office

WGB/jjd

Cc: Stephen A. Sharkey (via email sharkes@bsk.com)
Bond, Schoeneck & King, PLLC

The joint request to resume mediation and extend the discovery deadline is granted. The deadlines shall be extended as outlined above.
IT IS SO ORDERED.

s/Marian W. Payson

Hon. Marian W. Payson

United States Magistrate Judge

Dated: January 19, 2023